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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/723,688

11/26/2003

Peter Gaal

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EXAMINER

ELCENKO, ERIC J

ART UNIT

PAPER NUMBER

2617

NOTIFICATION DATE

DELIVERY MODE

08/05/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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|------------------------------|--------------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 10/723,688 | Applicant(s) GAAL ET AL. | |
| | Examiner ERIC ELCENKO | Art Unit 2617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 and 37-41 is/are pending in the application.
- 4a) Of the above claim(s) 32-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 and 37-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments have been fully considered but they are not persuasive. The applicant argues the combination does not teach or suggest "assigning a second sub-code derived from the first code to support a supplemental channel to the second subscriber station." The examiner respectfully disagrees. The code tree as seen in Fig. 2. shows how codes are derived from higher codes. Lindskog goes on to disclose selecting codes for allocation depending on rate needed. Paragraphs 25-30 go into greater detail of the different codes from the code tree as seen in Fig. 2 and explained below in the current action. The applicant also argues Lindskog does not disclose assigning more than one channel with different Walsh codes. The claimed subject matter does not mention directly using different Walsh codes, only different codes. Taken in its broadest general interpretation, codes does not limit the claimed subject matter to Walsh codes.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 39-41 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 39-41 contain wording that is non-statutory and related to material in the specification that is directed at non-statutory material. Appropriate correction is required.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-31 and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindskog (U.S. Pub. No. 2006/0120322) in view of Scherzer et al. (U.S. Pat. No. 6,901,062)

In regard to Claims 1, 7, 14, 16, 19, 25-26 and 37-41, Lindskog teaches allocating a first code to a first subscriber station, *(A request comes in for allocation of channel resources, and a specific channel resources is allocated, Abs)* Assigning a first sub-code derived from the first code to support a dedicated channel to the first subscriber station, *(depending upon the rate needed, a code is broken down as shown in Fig. 2 into smaller sub-codes of the larger code to maximize the resources available., Para 25-27)* This process can be done for multiple mobile stations. Assigning a second sub-code derived from the first code to support a supplemental channel to the second subscriber station. *(depending upon the rate needed, the allocation may contain multiple codes from the tree as shown in Fig. 2. from which more than one sub-code would be allocated to maximize the resources. Different size codes from different parent codes would be used, making them multiple codes. Para 28,30,37 and 44)*

Lindskog does not directly disclose a second mobile station. While it is obvious that more than 1 mobile station would be present in a communication system, Scherzer is cited for a direct reference to multiple mobile stations.

Scherzer teaches grouping the subscriber stations in a number of groups (e.g., M groups) and allocating resources to subscriber stations in groups. (Col 9, Ln 33-55)

It would have been obvious to one of ordinary skill in the art to modify Lindskog to include the teaching of Scherzer in order for a larger number of subscribers to be handled and provide more efficient service while taking into consideration a large group of connections rather than a single mobile station.

In regard to Claims 2, 8, 10, 20 and 28, Lindskog teaches assigning a third sub-code derived from the first code to support a second supplemental channel to the second subscriber station. (*Para 28, 30 , 37 and 44*)

In regard to Claim 3, 11, 21, and 29, it is obvious to one of ordinary skill in the art that that in a communication system at any time there can be a mobile in soft hand off and one not in soft handoff. There can also be none in soft handoff. The allocation of a code to a mobile in soft-hand off would only constitute holding the resource in the first cell for additional time. (*Para 65*)

In regard to Claims 4, 9, 17-18, 22 and 27 Lindskog teaches separating communications to the second subscriber station into first and second portions. Spreading the first portion of the communication with the second code and spreading the second portion of the communications with the second sub-code. (*spreading codes are assigned to a forward-link connections from a first set of orthogonal odes as long as*

there are codes available in the first set. When no more codes are available, codes from a second set Are assigned. Para 4)

In regard to Claim 5, 12, 15, 23 and 30, Lindskog teaches he first sub-code comprises a plurality of concatenated copies of the first code. (Para 28)

In regard to Claim 6, 13, 24 and 31, Lindskog teaches signaling to the second subscriber the first code. (Para 27-30)

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC ELCENKO whose telephone number is (571)272-8066. The examiner can normally be reached on M-F 7:30 AM through 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc Nguyen can be reached on (571) 272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ee

/Duc Nguyen/
Supervisory Patent Examiner, Art Unit 2617